

Remarks

Restriction Requirement

In the above-referenced Office Action, the Examiner divided the claims into the following groups:

Group I. Claims 1-17, drawn to a method for determining the level of at least one polycyclic aromatic hydrocarbon, classified in class 436, subclass 140;

Group II. Claims 18-21, drawn to a method for determining the level of benzo[a]pyrene, classified in class 436, subclass 140; and

Group III. Claims 22-26, drawn to a method for determining the level of aromatic hydrocarbons, classified in class 436, subclass 140.

Applicant provisionally elects Group I, claims 1-17, with traverse under 37 C.F.R. §1.143 and requests reconsideration and withdrawal of the restriction.

Statutory law allows the Director to require restriction if two or more independent and distinct inventions are claimed in one application. (emphasis added). See 35 U.S.C. 121. The Patent Office interprets this statute as allowing restriction where the examiner has provided the following two criteria: (1) the inventions are either independent or distinct, and (2) there would be a serious burden on the examiner if restriction is not required. Note that the examiner must provide reasons and/or examples to support conclusions. See MPEP 803.

The examiner has not properly restricted the claims, as the inventions are neither independent nor distinct, and any search covering the subject matter of the claims would not present a serious burden. Groups I, II, and III are all drawn to a method for determining the level of an aromatic hydrocarbon. Each of the methods essentially comprises the steps of providing a sample in a solvent, applying the sample to a gel permeation column, eluting the sample to provide fractions, and measuring the aromatic hydrocarbon in the fractions. Although there are additional limitations set forth in the claims, there is a disclosed relationship between the

claims, such that they are not "materially different" in the manner necessary for a proper restriction. See MPEP 802.01. Moreover, the examiner alleges that the claims have "acquired a separate status in the art due to their recognized divergent subject matter," but the examiner still places each of the groups in the same class and subclass (436/140) without explanation. In view of the above, there is not a serious burden on the examiner to search Groups I, II, and III. Accordingly, Applicant respectfully requests that the examiner withdrawal the restriction requirement.

The undersigned attorney authorizes any fees that may be required, or credit of any overpayment, to be placed on Deposit Account No. 50-2207. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is encouraged to call the undersigned at (650) 838-4388.

Respectfully submitted,

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